

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5

UNIVERSAL DYNAMICS, INC.<sup>1</sup>

Employer

and

Case 5-RC-16002

ASSOCIATION OF UNADYN FIELD  
SUPPORT TECHNICIANS

Petitioner

**DECISION AND DIRECTION OF ELECTION**

The issue in this proceeding is whether an employee classified as a field support technician/electronics designer<sup>2</sup> is a dual-function employee with a sufficient interest in the working conditions of field support technicians that he should be included in the bargaining unit. At the hearing, the parties stipulated that only one employee, Paul Stafford, currently holds the position of field support technician/electronics designer. In addition, they stipulated that five employees—Darrin Mantle, Loren Ristola, Quentin Parlett, John Bruner, and Tom Ferguson—are field support technicians. They also stipulated that there is no relevant history of collective bargaining.

The Petitioner seeks to represent all full-time and regular part-time field support technicians and to exclude the field support technician/electronics designer.<sup>3</sup> It makes two principal arguments: (1) field support technicians do not share a community of interest with the field support technician/electronics designer; and (2) the field support technician/electronics designer is not a dual-function employee because he performs more duties as an electronics

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The Employer's job specification document, received into evidence at the hearing, calls the job classification "Electronics Designer & Field Support Technician." However, at the hearing the parties referred to it as "field support technician/electronics designer."

<sup>3</sup> The Petitioner and Employer stipulated that office clerical employees, professional employees, guards, and supervisors, as defined by the Act, should be excluded from the unit.

designer than he does as a field support technician.<sup>4</sup> In support of these arguments, it asserts that Mr. Stafford, the field support technician/electronics designer, does not travel to jobsites as frequently as field support technicians do, that the Employer's documents do not include him in the technical support department, where the field support technicians are placed, and that his annual performance review is not completed by the manager of the field support technician department. At the hearing, it presented testimony from Loren Ristola, one of the field support technicians. Furthermore, at the hearing, the Petitioner stated its willingness to proceed to an election in any unit found appropriate.

The Employer, by contrast, argues that the bargaining unit should include both field support technicians and the field support technician/electronics designer. It contends that the field support technician/electronics designer is a dual-function employee who spends approximately seventy-five percent of his time performing the same duties that field support technicians perform. It also notes that both job classifications receive the same benefits, are paid pursuant to the same pay structure, receive regular performance evaluations, and have similar education and job skill requirements. At the hearing, it presented testimony from Jan Harcharek, Human Resources Director; Robert Crawford, Vice President of Engineering; and Paul Stafford, field support technician/electronics designer.

I have carefully considered the evidence and arguments presented by the parties, at the hearing and on brief, regarding this issue. As discussed below, I conclude that the petitioned-for bargaining unit should include the field support technician/electronics designer.

### **FACTUAL SETTING**

Universal Dynamics, Inc., the Employer, is incorporated in Virginia and has an office and place of business in Woodbridge, Virginia. It manufactures and sells machines to companies in the plastics industry for use in those companies' manufacturing processes. It also services, repairs, and maintains those machines for its customers. Approximately one hundred and forty-two employees work for the Employer. Donald Rainville is President. The Vice Presidents, who report directly to Mr. Rainville, include, among others, Robert Crawford, Vice President of

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<sup>4</sup> The Petitioner also made an argument regarding the credibility of Paul Stafford. However, a pre-election hearing is investigatory in nature and credibility resolutions are not made. *Marian Manor for the Aged and Infirm, Inc.*, 333 NLRB 1084 (2001).

Engineering; Lou Botisk, Vice President of Manufacturing; and John Fleischer, Vice President of Sales and Marketing.

### Field Support Technicians

Field support technicians are part of the sales department led by John Fleischer. Bill Collis is the field support technicians' manager. The Employer has five field support technicians: Darrin Mantle; Loren Ristola; Quentin Parlett; John Bruner; and Tom Ferguson. The field support technicians work directly with the Employer's customers to provide technical assistance in the operation of the machines and to resolve any issues the customers have with the machines. They do this by responding to customer telephone calls, visiting customer sites, and assessing and repairing machine components that customers send them for repair. Because the Employer's customers are located throughout the United States, as well as in other countries, field support technicians are required to travel. Several of the field support technicians live in states other than Virginia, such as Missouri and Illinois. Most of them only occasionally report to the Employer's Woodbridge office. They may spend up to eighty percent [80%] of their time in work-related travel and at customer sites.

The Employer assigns field support technicians the following duties and responsibilities: to arrange travel plans when conducting work-related travel; to use their technical experiences to observe the equipment's performance and make recommendations for modifications of the equipment; to determine whether invoices are to be issued to customers pursuant to the Employer's warranty policy or whether the customer is to be billed for the services performed by the field support technician; to use discretion in issuing credits to customers on non-returnable parts; to conduct on-site training; to troubleshoot problems, perform maintenance, and perform some installation of machines; to train customers in the operation and maintenance of the machines; to document the nature of the problem, the work performed, and the adjustments required when servicing a machine and to report these findings to the company; and, when not working in the field, to perform Inside Technical Support duties and responsibilities. Inside Technical Support includes responding to customers' telephone calls.

Throughout the Employer's history, field support technicians have been part of various departments. In the mid-1980s, they reported directly to Robert Crawford and were part of the engineering department. Then, in the late 1980s, they were placed in the manufacturing

department, and, in the mid to late 1990s, were returned to the engineering department. Sometime in 2000, they were placed in the sales department, where they are currently located. The Employer is again considering moving the field support technicians to another department.

#### Field Support Technician/Electronics Designer

The field support technician/electronics designer position was created on or about April 3, 2006. Paul Stafford is the only employee to hold the position. Prior to April 3, Mr. Stafford's job title was electronic design technician. He has worked for the Employer since June of 1983 and has performed substantially the same duties for about the past ten years. He spends approximately twenty to twenty-five percent [20-25%] of his time doing electronics design work, approximately thirty to fifty percent [30-50%] of his time responding to customer telephone calls and providing technical support services to customers over the telephone,<sup>5</sup> and approximately twenty-five percent [25%] of his time away from the Woodbridge office because he is on travel or visiting customer sites.<sup>6</sup> In total, Mr. Stafford spends approximately fifty-five percent to seventy-five percent [55%-75%] of his time performing the same or very similar duties and responsibilities as those performed by field support technicians.

The Employer assigns the field support technician/electronics designer the same duties and responsibilities described above for field support technicians, and the following additional duties and responsibilities: to perform basic electronic packaging design, including the selection of electrical connectors and mounting components; to participate in the design, development, and testing of prototype electronic components and controls; to design and provide drawings for control panel "overlay" keypads; to develop written assembly procedures for the production of electronic components; to develop and maintain bills of material for all electronic assemblies; to develop and maintain cost figures for all electronic assemblies; to monitor the availability of electronic components and, as the components become no longer available, to select replacement or alternate components as needed; and to organize bills of material suitable to distribute to suppliers. Some of the electronics designer duties and responsibilities are related to the

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<sup>5</sup> Mr. Stafford responds to roughly the same number of customer telephone calls as do the field support technicians.

<sup>6</sup> Mr. Stafford spends less time, on average, on travel or visiting customer sites than do the field support technicians. As noted above, the field support technicians spend up to eighty percent [80%] of their time on travel or at customer sites.

development of new products. The Employer develops between five and seven new products each year. Therefore, the field support technician/electronics designer participates in the design, development, and testing of prototype electronic components and controls, to design and provide drawings for control panel “overlay” keypads about six or eight times a year. Additionally, the field support technician/electronics designer would develop written assembly procedures for the production of electronic components a maximum of ten times in a year.

Mr. Stafford reports to Robert Crawford, Vice President of Engineering, and Bill Collis, field support technician manager. Mr. Crawford directs Mr. Stafford in assignments that pertain to electronics design, while Mr. Collis directs him in his duties as a field support technician. If the electronics design and field support technician work assignments conflict, Mr. Crawford, Mr. Collis, and Mr. Stafford meet to resolve the situation. In June of 2006, Mr. Crawford completed Mr. Stafford’s performance evaluation. Mr. Collis, who completes the annual performance evaluations for the field support technicians, did not participate in Mr. Stafford’s evaluation. Mr. Stafford’s office is near the production engineering group, on the second floor of the Employer’s Woodbridge office. Mr. Collis’s office is located in a separate, but adjoining, building in Woodbridge.

In performance of the duties and responsibilities assigned to field support technicians, Mr. Stafford travels to customer sites to troubleshoot control systems.<sup>7</sup> This involves checking wires and routing cables in the control system that operates the machines. He has also trained customers on-site, has installed machines, and has performed maintenance. In addition, he has occasionally disassembled machines to repair or replace various parts, such as vacuum pumps and dryers. He determines whether invoices are to be issued to customers pursuant to the Employer’s warranty policy or whether the customer is to be billed for the services he performs as a field support technician. He also repairs machine components that customers send the Employer for repair.

The field support technician/electronics designer is part of the engineering department led by Robert Crawford. Three control design employees report directly to Mr. Crawford: Bill Rollins, an engineer; Paul White, also an engineer; and Mr. Stafford, who is not an engineer but has an associate’s degree in electronic technology. The two engineers create designs for the

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<sup>7</sup> Control systems are electronic cards that control the operation of the machines.

control systems. In his capacity as an electronics designer, Mr. Stafford prepares documents that are needed to manufacture the engineers' designs. For example, he prepares a bill of material, which provides a list of materials and other information needed to manufacture the design.

Mr. Stafford receives e-mail messages from Bill Collis regarding the availability and leave status of the field support technicians. However, in at least one e-mail, Mr. Collis has listed the availability and leave status of the five field support technicians but has not included information regarding Mr. Stafford. Mr. Stafford does not appear to be part of the technical support group e-mail list, which includes all five<sup>8</sup> of the field support technicians.<sup>9</sup> The Employer's documents place Mr. Stafford in the electronics category and the engineering controls design department and place the field support technicians in the technical support category.

Field support technicians and the field support technician/electronics designer receive the same employee benefits and are eligible for a bonus.<sup>10</sup> They work forty hours a week and may receive overtime. Employees in both job classifications are given certain tools by the Employer. In addition, both classifications require an associate's degree or an equivalent degree from a two-year college or technical school. However, whereas field support technicians require one to two years of related experience and/or training, the field support technician/electronics designer position requires six months to one year of related experiences and/or training. Unlike most of the field support technicians, Mr. Stafford lives near Woodbridge, Virginia, and reports to the Employer's Woodbridge office on a regular basis.

## **ANALYSIS**

The Board has long held that employees who perform more than one function for the same employer may be part of a bargaining unit if they regularly perform duties similar to those

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<sup>8</sup> The e-mail list also includes Ken Ippolito, an employee who works in the controls department, and Donna Johnson, Bill Collis's assistant. Neither party contends that Mr. Ippolito and Ms. Johnson should be in the bargaining unit.

<sup>9</sup> The Employer noted at the hearing that it is possible that additional names were listed in the e-mail group and the document, a copy of a computer screen image, did not show those names because it would have required scrolling the cursor further down.

<sup>10</sup> No other employee in the engineering department is eligible for the bonus.

performed by unit members for sufficient periods of time to demonstrate that they have a substantial interest in the working conditions of the unit. *Columbia College*, 346 NLRB No. 69 (2006), citing *Berea Publishing Co.*, 140 NLRB 516, 519 (1963). In determining whether an individual is a dual-function employee, the Board does not consider the relationship of the employee's job functions. *Id.* Thus, an employee may perform seemingly different job functions for an employer and still be considered a dual-function employee. See *Alpha School Bus Co.*, 287 NLRB 698 (1987) (finding dual-function status where an employee working as a bus driver and a mechanic for the employer wore different uniforms for each position, had different supervisors for each position, punched in with different timecards, and received different pay and benefits). The key is whether the dual-function employee performs unit work for enough time to demonstrate that he has a substantial interest in the unit's wages, hours, and conditions of employment. *Bredero Shaw*, 345 NLRB No. 48 (2005), citing *Air Liquide America Corp.*, 324 NLRB 661, 662 (1997).

The Board does not have a bright line rule for the amount of time a dual-function employee is required to spend performing unit work. Rather, it has found that dual-function employees have a substantial interest in the work conditions of unit employees even when they perform unit functions less than half the time. *Wilson Engraving Co.*, 252 NLRB 333, 334 (1980); *Berea Publishing Co.*, 140 NLRB 516, 519 (1963) ("we now believe that a dual-function employee devoting less than 51 percent of his time to unit work may have sufficient interest in the unit's conditions of employment to be included in the unit").

Moreover, the Board has held that the inclusion of a dual-function employee within a particular unit does not require a showing of community of interest factors in addition to the regular performance of a substantial amount of unit work. *Fleming Industries*, 282 NLRB 1030 fn. 1 (1987).

In the instant case, the employee classified as field support technician/electronics designer is a dual-function employee because he performs two job functions for the Employer. He works as a field support technician and as an electronics designer. The job description for field support technician/electronics designer sets forth the dual functions. It encompasses all of the duties and responsibilities assigned to field support technicians, as well as additional duties related to electronics design. Mr. Stafford, currently the only field support technician/electronics designer, performs both functions. In his capacity as a field support technician, he provides

technical support services to customers over the telephone. He also visits customer sites to install the Employer's machines, to perform maintenance on the machines, and to train customers on use of the machines. He determines whether invoices are to be issued to customers pursuant to the Employer's warranty policy or whether the customer is to be billed for the services he performs as a field support technician. He also repairs machine components that customers send the Employer for repair. Likewise, in his capacity as an electronics designer, he prepares documents needed to manufacture the engineers' designs, he prepares bills of materials, and he performs basic electronic design packaging.

The field support technician duties performed by the dual-function employee are very similar, if not identical, to the duties performed by the field support technicians. As mentioned above, the job description for field support technicians/electronics designer includes all of the duties and responsibilities assigned to field support technicians. Two major components of the duties are to travel to customer sites and to provide technical support services to customers over the telephone. Field support technicians/electronics designers are required to perform both, and Mr. Stafford does both.

One difference, however, is the amount of time field support technicians spend traveling to customer sites and responding to customer telephone calls versus the amount of time the field support technician/electronics designer spends doing the same tasks. Field support technicians do not regularly report to the Employer's Woodbridge office. Instead, they work in the field and at home offices. They may spend up to eighty percent [80%] of their time in work-related travel and visiting customer sites. By contrast, Mr. Stafford, the only field support technician/electronics designer, spends about twenty-five percent [25%] of his time in work-related travel or visiting customer sites. Likewise, because the field support technicians are predominantly working in the field, they may spend less time responding to customer telephone calls than the field support technician/electronics designer. Mr. Stafford spends between thirty to fifty percent [30-50%] of his time responding to customer telephone calls. The differences are insignificant to the analysis of whether dual-function employees perform duties similar to those performed by unit employees. By their very nature, dual-function employees, because they perform two functions, do not spend the same amount of time on unit work as do the unit employees. The test is whether the dual-function employees spend sufficient periods of time doing work similar to unit members to demonstrate that they have a substantial interest in the



working conditions of the unit.<sup>11</sup> *Columbia College*, 346 NLRB No. 69 (2006), citing *Berea Publishing Co.*, 140 NLRB 516, 519 (1963).

Here, the nature of the electronics design work means that employees classified as field support technicians/electronics designer will spend more than half of their time performing duties similar or identical to the duties of field support technicians. Indeed, Mr. Stafford spends only twenty to twenty-five percent [20-25%] of his time performing electronics design work. The remainder of his time is spent performing the duties of a field support technician. He spends thirty to fifty percent [30-50%] of his time responding to customer telephone calls, and about twenty-five percent [25%] of his time in work-related travel or visiting customer sites. The total amount of time he spends doing field support technician duties this is between fifty-five and seventy-five percent [55-75%]. In my opinion, this is more than sufficient to show that field support technician/electronics designers have a substantial interest in the wages, hours, and conditions of employment of field support technicians.

Accordingly, based on all the foregoing, I find that the field support technician/electronics designers are dual-function employees who must be included in the petitioned-for bargaining unit.

### **CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Union, Association of UnaDyn Field Support Technicians, is a labor organization as defined in Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain

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<sup>11</sup> Similarly, whether or not the dual-function employee is classified in the same department as the unit members and whether the dual-function employees receive an annual performance review from the unit members' manager is not part of the Board's test.

employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The parties stipulated that Universal Dynamics, Inc., a Virginia corporation, is engaged in the business of manufacturing and selling machines to companies in the plastics industry for use in those companies' manufacturing process at its Woodbridge, Virginia location. During the preceding 12 months, a representative period, the Employer sold and shipped goods from its Woodbridge, Virginia facility valued in excess of \$50,000 to points located outside the State of Virginia.

6. There is no relevant history of collective bargaining between the Employer and the Petitioner.

7. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time field support technicians and field support technicians/electronics designers employed by the Employer from its Woodbridge, Virginia facility, but excluding all office clerical employees, professional employees, guards and supervisors, as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Association of UnaDyn Field Support Technicians**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been

permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

#### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, 8<sup>th</sup> Floor, Baltimore, MD 21202, on or before **July 21, 2006**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list.

Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **D. Notice of Electronic Filing**

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: [www.nlr.gov](http://www.nlr.gov)

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., E.D.T. on **July 28, 2006**. The request may not be filed by facsimile.

(SEAL)

/s/Wayne R. Gold

Dated: July 14, 2006

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Wayne R. Gold, Regional Director  
National Labor Relations Board, Region 5  
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Baltimore, MD 21202